

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

DAVID J. DEFRECE, JR.,

Plaintiff,

v.

COMMISSIONER OF SOCIAL SECURITY,

Defendant.

Case No. 1:17-cv-188

HON. JANET T. NEFF

_____/

OPINION AND ORDER

Plaintiff seeks judicial review of a decision of the Commissioner of the Social Security Administration. 42 U.S.C. § 405(g). The matter was referred to the Magistrate Judge, who issued a Report and Recommendation, recommending that this Court vacate the Commissioner's decision to deny Plaintiff's claim for Supplemental Security Income under Title XVI of the Social Security Act, and remand this matter for further administrative action. The matter is presently before the Court on Defendant's objections to the Report and Recommendation (ECF No. 19). Plaintiff filed a response to the objections (ECF No. 20). In accordance with 28 U.S.C. § 636(b)(1) and FED. R. CIV. P. 72(b)(3), the Court has performed de novo consideration of those portions of the Report and Recommendation to which objections have been made. The Court denies the objections and issues this Opinion and Order.

At issue is the opinion of Plaintiff's treating physician, Dr. Timothy Bont. Defendant argues that the Magistrate Judge erred in concluding that the Administrative Law Judge's (ALJ's) explanation for discounting Dr. Bont's opinions was not supported by substantial evidence.

Defendant asserts that, contrary to the Magistrate Judge's decision, Plaintiff failed to sustain his burden of establishing reversible error to warrant vacating the Commissioner's decision.

Defendant cites to four reasons that the ALJ discounted Dr. Bont's opinion (ECF No. 19 at PageID.558), arguing that they are supported by evidence "adequate" to persuade "a reasonable mind" and thus suffice to discount Dr. Bont's opinion or they otherwise suffice under the legal standards because "the ALJ was entitled to weigh the evidence differently and reach a different conclusion" (*id.* at PageID.560). Defendant has failed to point to any errors that undermine the Magistrate Judge's overall analysis or conclusions.

The Magistrate Judge fully considered the ALJ's explanation for discounting Dr. Bont's opinion and determined that the ALJ's decision was not supported by substantial evidence. The Magistrate Judge noted in key part, that the ALJ discounted Dr. Bont's August 2014 opinion because "it does not account for 'subsequent treatment,'" but the ALJ failed to provide any supporting explanation or citation to the record, and Plaintiff's November 2015 MRI would appear to support, not undermine, Dr. Bont's opinion (ECF No. 18 at PageID.553). The Magistrate Judge additionally found other aspects of the ALJ's explanation problematic, including that Dr. Bont's opinions were undermined by his treatment notes (*id.* at PageID.553-554) and pain medication evidence (*id.* at PageID.554). The Magistrate Judge's detailed consideration supports the conclusion that the ALJ failed to properly evaluate the opinion of Plaintiff's treating physician and that remand is appropriate. Defendant's objection is denied.

Because Defendant's first objection, as to Dr. Bont's opinion, fails, Defendant's second objection, challenging remand based on "the ALJ's improper reliance on the vocation expert's testimony" (ECF No. 19 at PageID.560) also fails, since it is premised on Defendant's first objection.

Accordingly:

IT IS HEREBY ORDERED that the Objections (ECF No. 19) are DENIED, the Report and Recommendation of the Magistrate Judge (ECF No. 18) is APPROVED and ADOPTED as the Opinion of the Court; the decision of the Commissioner of Social Security is VACATED; and this case is remanded for further administrative action.

A Judgment will be entered consistent with this Opinion and Order.

Dated: September 6, 2018

/s/ Janet T. Neff
JANET T. NEFF
United States District Judge